

Service Date: July 3, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
U S WEST Communications, Inc. to)	
Offer Single Line ISDN Service and)	DOCKET NO. D96.7.121
Integrated Services Digital Network)	
Primary Rate Service.)	ORDER NO. 5940b

ORDER ON U S WEST'S MOTION TO COMPEL DISCOVERY RESPONSES

1. U S WEST Communications, Inc. (U S WEST) filed a Motion to Compel on May 15, 1997, asking the Commission to issue an order to compel AT&T's responses to U S WEST data requests. In support of its motion, U S WEST objected to AT&T's refusal to provide adequate responses to the data requests based on: (1) AT&T's unilateral determination that the information requested was "not at issue" or "not relevant," (2) AT&T's witnesses' failure to provide information because they personally do not know the answers to several data requests; and (3) other responses that neglected to provide information requested or which were prepared in an evasive manner.

2. At no time has AT&T objected to any of U S WEST's data requests. In its response to U S WEST's Motion to Compel, AT&T claimed that its responses to data requests meet the "standard for information that is discoverable in this proceeding." Throughout the response, AT&T makes numerous claims that the information asked for is not relevant to this proceeding, the request is overbroad, the information can be compiled by U S WEST from the public record, and information is proprietary and not relevant. Amazingly, AT&T asserts that the motion should be denied because "U S WEST has failed to demonstrate, or even to assert, that the additional information it seeks is relevant to this proceeding, nor has it explained why it needs any of the requested information." AT&T's response glosses over its own failure to object to data requests and attempts to place a burden on U S WEST that is not required absent a proper objection.

3. AT&T's statement that its responses meet the standard set in a Notice of Commission Action dated December 4, 1996 is specious.¹ That Notice denied AT&T's discovery request because AT&T did not clearly explain why it needed the specific information and the relevance of the requested information was unclear. The Commission's decision denying AT&T's request was based on U S WEST's objection to AT&T's data requests and AT&T's response to the objection.

4. The Commission's Procedural Order, along with the particular Montana Rules of Civil Procedure which have been adopted by the Commission, set the standard and procedures for discovery in this proceeding. If information requested by a party is not relevant or may properly be withheld for another reason, the Commission will make that determination following a proper objection made according to the Procedural Order and after allowing the party requesting the information to respond to the objection.

5. The December Notice of Commission Action, which AT&T refers to as setting the standard for information that is discoverable in this proceeding, was a ruling on a discovery motion. The ruling was based on objections made by U S WEST to AT&T's data requests. Here, AT&T answered the discovery requests with responses that should have been included in a filing with the Commission objecting to U S WEST's questions or should have been answered by another witness.

6. Not only did AT&T fail to object to the data requests, it also refused to answer based on its own interpretation of what is relevant. The Procedural Order states, "Failure to timely object will be a waiver of objections." Procedural Order, at ¶ 9. Paragraph 12 of the Procedural Order provides:

12. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or

¹ Discovery ruling on AT&T's Motion to Compel further responses from U S WEST.

oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof. (Emphasis supplied.)

It is not necessary to address whether or not the unmade objections have substantive merit. AT&T's unexcused refusal to adequately answer U S WEST's data requests after failure to object is an abuse of the discovery process which the Commission will not tolerate.

7. Determination's of relevance are not within one party's control. In order to prevent this conduct from happening again, we conclude that a sanction is appropriate as permitted by ¶ 12 of the Procedural Order and will, therefore, prohibit AT&T from supporting the relevance claims made in its answers to data requests or from opposing U S WEST's Motion to Compel.

THEREFORE, based upon the foregoing, it is ORDERED that U S WEST's Motion to Compel is granted.

It is further ORDERED that AT&T shall provide the information requested by U S WEST within 10 days of service of this Order.

DONE AND DATED this 25th day of June, 1997 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.